IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 862 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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UNION OF INDIA

Versus

RATILAL DEVA NAIK & 2

Appearance:

1. Criminal Appeal No. 862 of 1987

MR UI VYAS for the Appellant

MR RS SANJANWALA for Respondents No.1 & 2

MR MA BUKHARI, APP, for Respondent No. 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 10/08/2001

ORAL JUDGEMENT

1. The Union of India, through Assistant Collector of Customs, Bhavnagar, has preferred this appeal to challenge the judgment and order recorded by the learned

Chief Judicial Magistrate, Bhavnagar, in Criminal Case No.2948 of 1983, on February 3, 1987, acquitting respondents No.1 and 2 of the charges levelled against them punishable under Section 135(2) of the Customs Act, Section 120-B of the Indian Penal Code and Section 5 of the Import and Export Act.

2. The facts of the case, in nut-shell, are that a complaint came to be lodged against 11 persons by Assistant Collector of Customs, Mr. D.H. Chudasama, on November 10, 1983, for the abovesaid offences. Present respondents No.1 and 2 were indicated as accused Nos.10 and 11 in that case. The Assistant Collector of Customs, Bhavnagar, received an information that a vessel containing smuggled and contraband articles is approaching the sea-shore of Gujarat and, therefore, a Launch Al Saleh was deployed under leadership of one K.T. Raisangani, Customs Inspector, Bhavnagar, for patrolling. They noticed one MSV going towards Dandi from Gopnath side. The movement was suspicious and, therefore, signals were given for stopping the vessel. However, no heed was paid to the signals and the said vessel escaped. The said vessel was, therefore, chased. Still the vessel did not stop. However, about 9 persons jumped from the vessel and escaped. They could not be chased because of the shallow waters. The vessel was stopped. When the officials went on the vessel, there was nobody on the vessel, but smuggled articles like synthetic cloths, transistor radios, wrist watches, tape recorders, cassettes, etc. were found, the value of which was to the tune of Rs.55,33,502/-. The said vessel carried registration No. U.M.R. 1022 and name was SAGAR. During the investigation, it was found that the goods were purchased from Dubai. Bills in that regard were found from the vessel. It is the case of the prosecution that the goods that were brought were of accused No.10-respondent No.1 herein and accused Nos. 1 to 9 were only the employees. The vessel was of the ownership of accused No.11-respondent No.2 herein.

3. Before the Trial Court, when the trial began, accused No.1 had expired and the case against him was abated. Accused No.2 was found to be absconding for a long time and, therefore, the Trial Court separated the case of accused Nos. 10 and 11-present respondents No.1 and 2 and proceeded with the trial.

3.1 Considering the evidence led by the prosecution, learned Chief Judicial Magistrate came to a conclusion that the prosecution could not establish the charges against respondents No.1 and 2. When the vessel was

seized, neither of them was present. There was absolutely no evidence to indicate that the smuggled goods belonged to or were brought at the behest of respondent No.1. The only piece of circumstantial evidence to connect respondent No.1 with this offence was that that a utensil carrying name of R.D. Navik was found on the vessel and, therefore, the learned Magistrate came to a conclusion that the case against respondent No.1-original accused No.10 was not established.

3.2 As regards respondent No.2, learned Magistrate came to a conclusion that there is no evidence whatsoever to indicate that he had knowledge about the fact that the vessel is going to be used for the smuggling activity. He also came to a conclusion that from the evidence, it is clear that the vessel that was brought at Ghogha Port was not Gangasagar vessel, as there was evidence that Gangasagar, which was taken out for fishing to high seas had sunken. Learned Magistrate, therefore, concluded that the prosecution could not establish the charges levelled against the accused and recorded an order of acquittal. Aggrieved by the said judgment and order, the Union of India, thorough Customs Department, has approached this Court with the present appeal.

4. Learned Additional Standing Counsel for the Union of India, Mr. Vyas, has taken this Court through the record and proceedings. He submitted that the learned Chief Judicial Magistrate has committed grave error in overlooking the evidence that respondent No.2 was the owner of the vessel and, therefore, he would be vicariously liable for the activities undertaken with the help of the vessel. He submitted that presence of respondent No.1 stands established by virtue of the utensil found on the ship. He was found to be moving in the same area around the time when the raid was conducted. He submitted that these aspects were overlooked by the learned Magistrate and acquittal is recorded. He, therefore, urged that this appeal may be allowed.

5. Learned advocate, Mr. R.S. Sanjanwala, appearing for respondents No.1 and 2 has opposed this appeal. He also has taken this Court through the evidence and the judgment impugned in the appeal. He submitted that, so far as respondent No.1 is concerned, there is absolutely no direct evidence. The only circumstance sought to be used against respondent No.1 is finding of a utensil bearing name of respondent No.1. The utensil came on board is not established and only on a singular

circumstance, guilty of respondent No.1 cannot be said to have been established in absence of any direct evidence.

5.1 As regards respondent No.2, Mr. Sanjanwala submitted that there is absolutely no evidence to indicate that respondent No.2 had any knowledge about the possibility of the vessel being used for smuggling activities. He submitted that the learned Magistrate has come to a conclusion that the vessel that was brought to Ghogha Port was not Gangasagar, but some other vessel because Gangasagar is indicated to have drowned. In these circumstances, the learned Magistrate could not have recorded conviction. No other finding was possible and, therefore, this Court may not interfere with the judgment and order impugned in this appeal.

6. Mr. Bukhari, learned Additional Public Prosecutor, has appeared for respondent No.3-the State of Gujarat.

7. Having given a thoughtful consideration to the contentions raised by the learned advocates for parties and having given a close look to the evidence, it is found that the appellant has not been able to make out any case for interference by this Court in his appeal against acquittal. Mr. Vyas could not indicate that the view taken by the learned Trial Magistrate is an impossible one nor could he indicate any manifest error of fact or law which would call for any interference by this Court against an order of acquittal. The reasons can be stated, in brief, as under :-

7.1 The prosecution has examined number of witnesses, but there is absolutely no evidence to indicate that the goods found in the vessel were of the ownership of respondent No.1. Certain bills and vouchers were found to indicate that the goods were purchased from Dubai, but nowhere there is evidence to indicate that the goods were purchased by respondent No.1. There is no evidence to indicate that the goods were purchased at the behest of respondent No.1 or that the entire activity was carried out by respondent No.1 with the help of other absconding accused. There is total lack of direct evidence. The only circumstance to indicate involvement of respondent No.1 is finding of a utensil which carried name R.D. Navik. There is nothing to show that R.D. Navik, who owned that utensil, was respondent No.1 and none else. There is no evidence to show that there is no other R.D. Navik in the area. The possibility of this vessel being not of ownership of respondent No.1 cannot be ruled out. Taking extreme view, possibility of this utensil being

planted also cannot be ruled out.

7.2 In absence of any direct evidence, when the prosecution case depends on circumstantial evidence, it is expected of the prosecution to establish a strong and unbroken chain of circumstances to connect the accused with the offence. In the instant case, there is no such chain of circumstances to indicate that the activity was carried either by respondent No.1 or at his behest and, therefore, conviction could not have been recorded by the learned Magistrate.

8. So far as case against respondent No.2 is concerned, here again, there is absolutely no evidence to indicate that it was within his knowledge that the vessel was going to be used or even likely to be used for smuggling activities. The vessel in question is found to be of ownership of Naranbhai Gandabhai. It was alleged that the said vessel was sold by Naranbhai Gandabhai to respondent No.2, but no such documents are verified by the investigating agency. It also transpires that the Investigating Officer had recorded statement of one Vallabh Gojiya on September 25, 1981, who had obtained the fishing pass (Ex.129) in respect of Gangasagar vessel. There is an entry (Ex.107) to indicate that the vessel was under possession of Vallabh Gojiya at the time when the offence is said to have been committed. It was revealed before the Investigating Officer that the said vessel got sunk when it was out on fishing trip. Under the circumstances, it is a matter of doubt that the vessel that was brought to Ghogha Port was Gangasagar and none else. In this view of the fact situation brought on record, it cannot be said that the learned Trial Magistrate has committed any error either of law or of fact in recording the acquittal of respondents No.1 and 2. The appeal against acquittal, therefore, cannot be entertained. It merits dismissal and the same is, therefore, dismissed.

[A.L. DAVE, J.]

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